

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SAFE HAVEN HOME CARE, INC.,	)	
EVERGREEN HOMECARE SERVICE	)	
OF NY INC., ELIM HOME CARE	)	
AGENCY, LLC, DHCARE	)	Civil Action No.:
HOMEHEALTH, INC., SILVER LINING	)	
HOMECARE AGENCY, AND ANGEL	)	<b>ECF Case 22 Civ. 2267 (JPC)</b>
CARE, INC.	)	
Plaintiffs,	)	<b>ORDER TO SHOW CAUSE FOR</b>
v.	)	<b>PRELIMINARY INJUNCTION,</b>
	)	<b>TEMPORARY RESTRAINING</b>
UNITED STATES DEPARTMENT OF	)	<b>ORDER, AND EXPEDITED</b>
HEALTH AND HUMAN SERVICES,	)	<b>BRIEFING SCHEDULE</b>
XAVIER BECERRA, in his official	)	
capacity as Secretary of the United States	)	
Department of Health and Human Services,	)	
UNITED STATES CENTERS FOR	)	
MEDICARE & MEDICAID SERVICES,	)	
CHIQUITA BROOKS-LASURE, in her	)	
official capacity as Administrator of the	)	
U.S. Centers for Medicare and Medicaid	)	
Services, NEW YORK STATE	)	
DEPARTMENT OF HEALTH, MARY T.	)	
BASSETT, in her official capacity as	)	
Commissioner of the New York State	)	
Department of Health, BRETT R.	)	
FRIEDMAN, in his official capacity as	)	
Medicaid Director of the New York State	)	
Department of Health	)	
Defendants.	)	
_____	)	

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Safe Haven Home Care, Inc., Evergreen Homecare Service of NY Inc., Elim Home Care Agency, LLC, DHCare Homehealth, Inc., Silver Lining Homecare Agency, and Angel Care, Inc., (collectively, “Plaintiffs”) hereby move against Defendants United States Department of Health and Human Services (“HHS”), Xavier Becerra, in his official capacity as Secretary of HHS, United States Centers for Medicare & Medicaid Services (“CMS), Chiquita Brooks-Lasure, in her official

capacity as Administrator of CMS, New York State Department of Health (“NYSDOH”), Mary T. Bassett, in her official capacity as Commissioner of the NYSDOH, and Brett R. Friedman, in his official capacity as Medicaid Director of the NYSDOH (collectively, “Defendants”) for a Preliminary Injunction, Temporary Restraining Order, and an Expedited Briefing Schedule.

As set forth more fully in the Complaint for Declaratory and Injunctive Relief (“Complaint”), and Plaintiffs’ Memorandum of Law in Support of Order to Show Cause for a Temporary Restraining Order, Preliminary Injunction, and Expedited Briefing Schedule (“Memorandum of Law”), Plaintiffs proceed on the basis that Defendants HHS, CMS, Secretary Becarra, and Administrator Brooks-Lasure violated the Administrative Procedure Act in approving the NYSDOH’s first directed payment of federal-state funding for Medicaid home and community based services provided for under the American Rescue Plan Act of 2021, Pub. L. No. 117-2, and that completion of the first directed payment by the NYSDOH will cause Plaintiffs to suffer irreparable injury absent injunctive relief due to immediate competitive harm, reputational harm, and uncoverable financial harm.

NOW, upon the accompanying Declaration of Neil H. Koslowe, sworn to on this 18<sup>th</sup> day of March, 2020, as well as Plaintiffs’ Complaint, Memorandum of Law, the Declarations of Rouandy Pascal, Marina Piavskaia, and Jacob Joffe, it is hereby:

**ORDERED** that Plaintiffs have demonstrated good cause for setting an expedited briefing schedule in this proceeding due to the impending first directed payment;

**ORDERED** that Defendants show cause before the Honorable John P. Cronan, U.S.D.J., on [March 30, 2022, at 9:00 a.m., in Courtroom 12D of the Daniel P. Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007](#), as to why an Order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure

preliminary enjoying and/or temporarily restraining, without bond, Defendants, including their agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert with them, from implementing the first directed payment, vacating and setting aside CMS' approval of the NYSDOH's Section 438.6(c) Preprint Application, and ordering that Defendants NYSDOH, Commissioner Bassett and Medicaid Director Friedman resubmit a revised Section 438.6(c) Preprint Application to CMS with a plan that directs expenditures equally, and using the same terms of performance, for all Licensed Home Care Services Agency providing Medicaid services in New York State;

**IT IS FURTHER ORDERED** that Defendants' answering papers shall be filed and served upon Plaintiffs' counsel by email not later than the 24th day of March, 2022, and any reply papers shall be filed and served not later than the 28th day of March, 2022.

SO ORDERED this 21st day of March, 2022.

If either party expects to present testimony from a witness, the party shall inform the Court, and opposing counsel, by March 28, 2022.



Hon. John P. Cronan, U.S.D.J.  
New York, NY  
March 21, 2022